IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9548 OF 2003

The Food Corporation of India
& anr. ..Petitioners.

Vs.

Prakash Hemraj Hiran
Proprietor of Hiran Roadlines
Manmad ..Respondent.

....

Mr.A.D.Kango for the Petitioners.
Mr.P.S.Dani for the Respondent.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

16th March, 2006.

P.C. :

Rule, returnable forthwith. Learned counsel for the Respondent waives service. By consent taken up for final disposal.

The suit instituted by the Respondent for the recovery of monies against the Food Corporation

of India - the Petitioner herein is pending before the Civil Judge, Senior Division at Malegaon. The Respondent had issued a notice to produce documents in response whereto the Petitioners produced the documents which were sought and certain additional documents. Production of all these documents came to be allowed by the Learned Trial Judge. However, the Civil Judge, Senior Division, by his order dated 30th August, 2003 restrained the Petitioner from confronting the Respondent or his witness with the said documents in the course of cross examination, save and except for refreshing the memory of the witness, and save for those documents of which production was made in view of the notice of the Respondent at Exh.35.

There is merit in the grievance of the Petitioners that production of the documents having been allowed, it was rather technical on the part of the Learned Trial Judge to not permit the Petitioners to confront the Respondent with those documents in the course of the cross examination. The impugned order of the Learned Trial Judge is therefore manifestly erroneous and requires interference to that extent. At the same time, it

has been submitted on behalf of the Respondent that if this Court were to be inclined to allow the Petitioners to cross examine the Respondent with reference to the documents, then the Respondent in that case should be allowed the opportunity of leading additional evidence in chief, if the Respondent is so advised, with a view to enable the Respondent to have the opportunity of explaining the documents before the cross examination takes place. This request is fair and proper. In the circumstances, the Petition is disposed of with the following directions :

i) The impugned order of the Learned Trial Judge dated 30th August, 2003 in so far as it directs that the Petitioners shall not confront the Respondent or his witness with the documents which came to be produced on the record is to that extent quashed and set aside;

ii) It would be open to the Respondent to lead additional evidence in chief should the Respondent be so advised, specifically with reference to the documents of which

production has been allowed. This shall be completed within a period of four weeks from today;

iii) It would be open thereafter to the Petitioners to conduct the cross examination in accordance with law;

The Petition is accordingly disposed of in these terms. There shall be no order as to costs.